

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

* * *

1 ANDRE SMITH, SR.,

7 v. Plaintiff,

8 PHYSICIANS MUTUAL INSURANCE CO.,
9 et al.,

10 Defendants.

Case No. 3:21-cv-00243-MMD-CLB

ORDER

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12 On July 7, 2021, *pro se* Plaintiff Andre Smith, Sr., was directed to file an
13 amended complaint within 14 days. (ECF No. 4.) That deadline has now expired,
14 and Smith has not filed an amended complaint or otherwise responded to the Court's
15 order.

16 District courts have the inherent power to control their dockets and "[i]n the
17 exercise of that power, they may impose sanctions including, where appropriate . . .
18 dismissal" of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829,
19 831 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party's
20 failure to prosecute an action, failure to obey a court order, or failure to comply with
21 local rules. See *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for
22 noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir.
23 1992) (dismissal for failure to comply with an order requiring amendment of complaint);
24 *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for failure to comply
25 with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v.*
26 *U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with
27 court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for
28 lack of prosecution and failure to comply with local rules).

In determining whether to dismiss an action for lack of prosecution, failure to obey a court order, or failure to comply with local rules, the court must consider several factors: (1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic alternatives. *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at 130; *Ferdik*, 963 F.2d at 1260-61; *Ghazali*, 46 F.3d at 53.

In the instant case, the Court finds that the first two factors, the public's interest in expeditiously resolving this litigation and the Court's interest in managing the docket, weigh in favor of dismissal. The third factor, risk of prejudice to defendant, also weighs in favor of dismissal, since a presumption of injury arises from the occurrence of unreasonable delay in filing a pleading ordered by the court or prosecuting an action. See *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor—public policy favoring disposition of cases on their merits—is greatly outweighed by the factors in favor of dismissal discussed herein. Finally, a court's warning to a party that his failure to obey the court's order will result in dismissal satisfies the "consideration of alternatives" requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-33; *Henderson*, 779 F.2d at 1424. The Court's order requiring Smith to file an amended complaint within 14 days expressly stated: "Failure to file an amended complaint with 14 days shall result in dismissal of this action with prejudice." (ECF No. 4 at 4.) Thus, Smith had adequate warning that dismissal would result from his noncompliance with the Court's order to file an amended complaint.

It is therefore ordered that this action is dismissed with prejudice based on Smith's failure to file an amended complaint in compliance with this Court's order.

DATED THIS 26th Day of July 2021.



MIRANDA M. DU
UNITED STATES DISTRICT JUDGE